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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,069	01/20/2004	Jack G. Halterman	JGH-1	3695

7590
Charles W. McHugh
1010 Milby Rd.
Arlington, TX 76013

06/04/2007

EXAMINER

PATEL, TAJASH D

ART UNIT	PAPER NUMBER
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3765

MAIL DATE	DELIVERY MODE
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06/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/763,069	Applicant(s) HALTERMAN, JACK G.	
	Examiner Tejash D. Patel	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11, and 13-19 is/are rejected.
- 7) ☒ Claim(s) 6, 12, 20 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-6 and 21 previously withdrawn from consideration as a result of a restriction requirement are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement with regard to claims 1-6 and 21 as set forth in the Office action mailed on November 9, 2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7, 8, 10, 11, 13 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Bay et al. (US 6,263,510). Bay et al. (hereinafter Bay) discloses a garment (14) worn by a motorcycle rider (10) including a self folding air impervious flap (50) having a rectilinear shape and a liner edge is kept open in windy or high speed use which is worn at the front of the motorcycle rider having a first rest position as it hangs generally parallel and downward from the front of the body as shown in figure 4. Further, the flap having a restraining member (80) has a second operative position at which it protrudes generally perpendicular and forwardly from the front of the body is defined as an air deflector which inherently rams air blowing upward along the front of the body, col. 4, lines 4-48. as shown in figures 6 and 7. In addition, an anchor part (66) being positioned over the front of the upper part of the torso is generally perpendicular therefrom or generally parallel therefrom when in the first and second positions, col. 4, lines 3-48 and as shown in figure 7.

With regard to claim 8, the flap is divided into two folded halves with each of the halves being placed on opposite sides with respect to a centerline through the body as shown in figure 7.

With regard to claim 19, it is inherent that the flap (50) is relatively flexible.

The “whereby” statement in claims 7, 10, and 11; “adapted to” in claim 11 and “whereby” in claim 19 has not been given patentable weight since it does not positively limit the metes and bounds of the patent protection as desired.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Golde (US 5,845,336). Golde discloses a jacket worn by a motorcycle rider including an air deflector (40) that is positioned between the torso at an elevation between the waist and the head that is inherently projected forward as air sticks thereon which minimizes a substantial impact on the helmet/eyes as shown in figures 1 and 2. The air deflector is positioned approximately as the rider’s breast as shown in figure 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bay .

With regard to claims 9 and 19, the restraining member is made of deformable metal strip, col. 4, lines 15-16. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to recognize that a sufficient weight/force of the user would

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allow the flap to fall into a rest position or depending on the end use thereof.

With regard to claim 14, it would have been obvious that the garment of Bay can be a sleeveless vest since such article of clothing is considered equivalent in the art of garment making.

With regard to claims 15, 16, 17, and 18, the claimed limitation does not offer any unexpected or critical results therefrom. Therefore, it would have been obvious to one skilled in the art that the flap and anchor can be made of any desired material that was available at the time the device was made having desired configuration as required for a particular application or end use thereof.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golde (US 5,845,336). With regard to claim 3, it would have been obvious to one skilled in the art that the air deflector can be configured as required for a particular application or end use thereof.

8. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golde (US 5,845,336) as applied to claim 1 above, and further in view of Golde (US 7,017,191). Golde '336 does not show the air deflector rotating about an effective hinge line.

Golde'191 show an air deflector/scoop (134) rotating about an effective hinge that automatically when air strikes thereon line, 8, lines 51-64 and as shown in figure 7.

It would have been obvious to one skilled in the art at the time the invention was made to provide Golde '336 with an air deflector rotating about an effective hinge line upon air impinged

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thereon as taught by Golde '191 as an alternative but equivalent venting means as known in the art or depending on the end use thereof.

Allowable Subject Matter

9. Claims 6, 12, 20 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

May 16, 2007

A handwritten signature in black ink, appearing to read 'Tejash Patel', with a long horizontal line extending to the right.

**TEJASH PATEL
PRIMARY EXAMINER**